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Via Electronic Filing

Hon. Rachel P. Kovner, United States District Court Judge
U.S. District Court, Eastern District of New York
225 Cadman Plaza East
New York, NY 11201

February 17, 2023

Re: *GBML LLC v. M2B Investors, Ltd. et al.*
Case No.: 1:22-cv-03138

Dear Judge Kovner:

This firm represents the Plaintiff in this matter, GBML LLC. I am writing in response and in partial opposition to the letter of Defendants dated February 10, 2023 (Dkt. 48), which purports to be a motion to strike Plaintiff's motion for Declaratory Judgment (Dkt. 47).

Initially, Defendants' application should be rejected as being procedurally defective. There is no procedure to "move to strike a motion". The only provision for a motion to strike is contained in Fed. R. Civ. P. 12(f), which states:

The court may strike from a *pleading* [emphasis added] an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:

- (1) on its own; or
- (2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

Aside from the fact that that which Defendants seek to strike is not a pleading or part thereof, none of these circumstances are claimed by Defendants to be present here. *See Lipsky v. Commonwealth United Corp.*, 551 F.2d 887 (2d Cir. 1976); *United States CFTC v. A.S. Templeton Group, Inc.*, 297 F. Supp. 2d 531 (E.D.N.Y. 2003).

The only case found in which a motion was made to strike a motion was the extraordinary case of *Cobell v. Norton*, 1:96CV01285 (D.C. Dist. Col. 2004), in which an entire motion was stricken because the entire motion was held to be scandalous, again, not a circumstance existing here.

Nevertheless, for other reasons, Plaintiff hereby withdraws its motion for declaratory judgment (Dkt. 47) at this time, without prejudice.

We thank the Court for its attention to this matter and await the Court's guidance.

Respectfully submitted,

/s/ Marc J. Held
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